

THE HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

AL DENNIS,

Plaintiff,

v.

THE HERSHEY COMPANY, GREGORY
JOHN PELL, THOMAS C. SMUDA,
BENJAMIN J. STOFFEL, MICHAEL R.
WEST,

Defendants.

THE HERSHEY COMPANY,

Counterclaimant,

v.

AL DENNIS,

Counterdefendant.

Case No. 3:13-cv-05131 - RBL

DEFENDANT THE HERSHEY
COMPANY'S ANSWER TO
PLAINTIFF'S COMPLAINT

AND COUNTERCLAIM FOR BREACH
OF CONTRACT, PROMISSORY
ESTOPPEL, AND UNJUST
ENRICHMENT

COMES NOW Defendant The Hershey Company ("Hershey")¹ by and through its
attorneys, Schwabe, Williamson & Wyatt, and answers Plaintiff's Complaint as follows:

JURISDICTION AND VENUE

1. As to paragraph 1 of Plaintiff's Complaint, Hershey admits that the

¹ Because all individual Defendants have simultaneously filed a Motion to
Dismiss Plaintiff's Complaint, no response to the allegations is required at this time.

DEFENDANT'S ANSWER TO PLAINTIFF'S
COMPLAINT AND COUNTERCLAIM
Case No. 3:13-cv-05131 - RBL - 1

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1 allegations in Plaintiff's Complaint speak for themselves and that Plaintiff has asserted
2 claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-2, and RCW
3 49.60.180(3).

4 2. Paragraph 2 of Plaintiff's Complaint asserts a legal conclusion and, therefore,
5 no answer is required. To the extent an answer is required, Hershey admits that the
6 allegations in Plaintiff's Complaint speak for themselves and that Plaintiff has invoked
7 subject matter jurisdiction pursuant to the statutes cited in paragraph 2 of Plaintiff's
8 Complaint. To the extent implied, Hershey denies this Court has personal jurisdiction over
9 the individual defendants.

10 3. As to paragraph 3 of Plaintiff's Complaint, Hershey admits that the
11 allegations in Plaintiff's Complaint speak for themselves and that Plaintiff has asserted
12 claims pursuant to RCW 49.60.180(3) against the individual defendants. To the extent
13 implied, Hershey denies this Court has personal jurisdiction over the individual defendants.

14 4. Paragraph 4 of Plaintiff's Complaint asserts a legal conclusion and, therefore,
15 no answer is required. To the extent an answer is required, Hershey admits that this Court
16 may assert supplemental jurisdiction as to Hershey.

17 5. Paragraph 5 of Plaintiff's Complaint asserts a legal conclusion and, therefore,
18 no answer is required. To the extent an answer is required, Hershey admits that venue in this
19 district might be proper as to Hershey.

20 ADMINISTRATIVE PREREQUISITES

21 6. Hershey denies paragraph 6.

22 7. Hershey admits that on or about March 28, 2011, Plaintiff notified the EEOC
23 of alleged discrimination charges against Hershey and that on June 1, 2011, Plaintiff
24 submitted his charge of discrimination. Hershey is without sufficient information to admit or
25 deny the remaining allegations contained in paragraph 7 and, therefore, denies them.

26 8. Hershey is without sufficient information to admit or deny the allegations

1 contained in paragraph 8 and, therefore, denies them.

2 **NATURE OF THE ACTION AND RELIEF SOUGHT**

3 9. As to paragraph 9, the allegations in Plaintiff's Complaint speak for
4 themselves. To the extent an answer is required, Hershey admits that Plaintiff has alleged
5 racial discrimination in this case, but Hershey denies that the alleged acts and/or omissions
6 set forth in Plaintiff's Complaint occurred as alleged.

7 10. As to paragraph 10, the allegations in Plaintiff's Complaint speak for
8 themselves. To the extent an answer is required, Hershey admits that Plaintiff has alleged
9 race discrimination and intentional infliction of emotional distress in this case, but Hershey
10 denies that the alleged acts and/or omissions set forth in Plaintiff's Complaint occurred as
11 alleged.

12 11. Hershey denies paragraph 11.

13 **THE PARTIES**

14 12. Hershey admits that it employed Plaintiff between October 2003 and
15 December 2010. Hershey admits that Plaintiff is an African-American male. Hershey is
16 without sufficient information to admit or deny the remaining allegations in paragraph 12
17 and, therefore, denies them.

18 13. Hershey admits that it is a corporation registered in the State of Delaware with
19 its principal place of business in Hershey, Pennsylvania. Hershey admits that it is registered
20 to do business in the State of Washington and that it employs more than fifteen (15)
21 employees. Except as expressly admitted, Hershey denies the allegations in paragraph 13.

22 14. All individual defendants have simultaneously filed a Motion to Dismiss
23 pursuant to Federal Rules of Civil Procedure 12(b)(2) and 12(b)(6). Therefore, no response
24 to paragraph 14 is required. To the extent a response is required, upon information and
25 belief, Hershey admits that Mr. Greg Pell is a resident of the State of Michigan. Hershey
26 admits Mr. Pell held several positions within the company, including District Sales Manager.

1 Hershey admits that Mr. Pell has not been employed by Hershey since April 2008. To the
2 extent a response is required and except as expressly admitted, Hershey denies the
3 allegations in paragraph 14.

4 15. All individual defendants have simultaneously filed a Motion to Dismiss
5 pursuant to Federal Rules of Civil Procedure 12(b)(2) and 12(b)(6). Therefore, no response
6 to paragraph 15 is required. To the extent a response is required, Hershey admits that Mr.
7 Tom Smuda is a resident of the Commonwealth of Pennsylvania and is the Vice President of
8 North America Retail. To the extent a response is required and except as expressly admitted,
9 Hershey denies the allegations in paragraph 15.

10 16. All individual defendants have simultaneously filed a Motion to Dismiss
11 pursuant to Federal Rules of Civil Procedure 12(b)(2) and 12(b)(6). Therefore, no response
12 to paragraph 16 is required. To the extent a response is required, Hershey admits that Mr.
13 Ben Stoffel is a resident of the State of Ohio and has held several positions within the
14 company, including South Area Sales Director. To the extent a response is required and
15 except as expressly admitted, Hershey denies the allegations in paragraph 16.

16 17. All individual defendants have simultaneously filed a Motion to Dismiss
17 pursuant to Federal Rules of Civil Procedure 12(b)(2) and 12(b)(6). Therefore, no response
18 to paragraph 17 is required. To the extent a response is required, Hershey admits that Mr.
19 Michael West is a resident of the State of Minnesota and has held several positions within the
20 company, including West Area Retail Director and National Director of Convenience. To
21 the extent a response is required and except as expressly admitted, Hershey denies the
22 allegations in paragraph 17.

23 **FACTS**

24 18. Hershey denies paragraph 18.

25 19. Hershey admits it employed Plaintiff. Except as expressly admitted, Hershey
26 denies the allegations in paragraph 19.

1 20. Hershey admits that it currently employs Mr. Smuda, Mr. Stoffel and Mr.
2 West and previously employed Mr. Pell, who is no longer employed with Hershey. Hershey
3 states that the remainder of the allegations in paragraph 20 state a legal conclusion to which
4 no answer is required and, therefore, Hershey denies all allegations in paragraph 20 not
5 expressly admitted.

6 21. Hershey denies paragraph 21.

7 22. Hershey denies paragraph 22.

8 23. Hershey denies paragraph 23.

9 24. Hershey admits that Plaintiff held the position of Associate District Sales
10 Manager and that Mr. Pell supervised Plaintiff between August 2005 and August 2006 while
11 Mr. Pell was the District Sales Manager in Dallas, Texas. Except as expressly admitted,
12 Hershey denies paragraph 24.

13 25. Hershey admits that Plaintiff supervised Ms. Roselyn Ratcliff, who was
14 African American. Except as expressly admitted, Hershey denies the allegations contained
15 in paragraph 25.

16 26. Hershey denies paragraph 26.

17 27. Hershey denies paragraph 27.

18 28. Despite a reasonable investigation, Hershey is without sufficient information
19 to admit or deny the allegation that Plaintiff applied for a DSM position in Atlanta. Hershey
20 admits that Plaintiff was not employed as DSM in Atlanta. Except as expressly admitted,
21 Hershey denies the remaining allegations in paragraph 28.

22 29. Hershey admits Ms. Jill Winters was hired for the DSM position in Atlanta.
23 Except as stated above, Hershey denies the remaining allegations in paragraph 29, including
24 the allegation regarding Ms. Winter's ethnicity, which Hershey is without sufficient
25 information to admit or deny

26 30. Despite a reasonable investigation, Hershey is without sufficient information

1 to admit or deny the allegations contained in paragraph 30 at this time and, therefore, denies
2 them.

3 31. Hershey admits that Plaintiff was hired for the DSM position in Seattle,
4 Washington. Despite a reasonable investigation, Hershey is without sufficient information to
5 admit or deny the remaining allegations in paragraph 31 and, therefore, denies them.

6 32. Hershey admits that the March 2007 District Review occurred in Southern
7 California. Hershey further admits that Plaintiff had been in the DSM position in Seattle
8 since August 2006. Except as expressly admitted, Hershey denies the remaining allegations
9 contained in paragraph 32.

10 33. Hershey admits that Plaintiff presented first at the District Review meeting.
11 Except as expressly admitted, Hershey denies the remaining allegations contained in
12 paragraph 33.

13 34. Hershey denies paragraph 34.

14 35. Hershey admits that Plaintiff spoke to Mr. West after his presentation at the
15 March 2007 District Review meeting. Except as expressly admitted, Hershey denies the
16 remaining allegations contained in paragraph 35.

17 36. Hershey denies paragraph 36.

18 37. Hershey admits that Plaintiff spoke with Mr. Smuda after his presentation at
19 the March 2007 District Review meeting. Except as expressly admitted, Hershey denies the
20 remaining allegations contained in paragraph 37.

21 38. Despite a reasonable investigation, Hershey is without sufficient information
22 to admit or deny Plaintiff's allegation that he "complained to Haskell" about "West and
23 Smuda" at this time and, therefore, denies this allegation. Hershey denies the remaining
24 allegations in paragraph 38.

25 39. Hershey denies paragraph 39.

26 40. Hershey denies paragraph 40.

1 41. Hershey denies paragraph 41.

2 42. Hershey admits that Plaintiff spoke to Ms. Sharon Reed about Mr. Mireles on
3 or about April 17, 2007. Except as expressly admitted, Hershey denies the allegations
4 contained in paragraph 42.

5 43. Hershey admits Plaintiff applied for a position as "Category Development
6 Manager." Except as expressly admitted, Hershey denies the remaining allegations
7 contained in paragraph 43.

8 44. Hershey admits that Plaintiff applied for a position as the Customer Sales
9 Executive in California and that Plaintiff was not hired for this position. Except as expressly
10 admitted, Hershey denies the remaining allegations contained in paragraph 44.

11 45. Despite a reasonable investigation, Hershey is without sufficient information
12 to admit or deny the allegations contained in paragraph 45 and, therefore, denies them.

13 46. Hershey admits Plaintiff applied for a position as DSM in San Antonio, Texas
14 and that Plaintiff was not hired for this position. Except as expressly admitted, Hershey
15 denies the remaining allegations contained in paragraph 46.

16 47. Hershey admits Ms. Haskell is no longer employed at Hershey. Despite a
17 reasonable investigation, Hershey is without sufficient information to admit or deny the
18 remaining allegations contained in paragraph 47 and, therefore, denies them.

19 48. Hershey admits it hired Plaintiff in a Cross Development Assignment as C-
20 Store Consumer Sales Executive ("CSE") effective August 17, 2009. Hershey admits that
21 the goals for Plaintiff's Cross Development Assignment included developing Plaintiff with
22 management experience into a CSE to gain the knowledge to compete in the future for senior
23 level management and sales roles within the company, and to help Plaintiff grow in
24 understanding the CSE role, customers, financial aspects and business acumen. Except as
25 expressly admitted, Hershey denies the allegations contained in paragraph 48.

26 49. Hershey admits that Jon Davis gave Plaintiff training, support and feedback in

1 connection with Plaintiff's position as CSE. Except as expressly admitted, Hershey denies
2 the allegations contained in paragraph 49.

3 50. Hershey denies paragraph 50.

4 51. Hershey denies paragraph 51.

5 52. Hershey admits that on August 10, 2010, Plaintiff was placed on a Ninety (90)
6 Day Development Plan. Except as expressly admitted, Plaintiff denies the allegations
7 contained in paragraph 52.

8 53. Hershey admits that on August 16, 2010, Plaintiff stated in an email to his
9 supervisor, Jon Davis, that he believed the plan to be discriminatory, evidencing harassment,
10 and retaliatory. Hershey admits that Plaintiff spoke to Jan Galloway, who investigated
11 Plaintiff's allegation, but Plaintiff never told Ms. Galloway, in August 2010, what he now
12 alleges in paragraph 51 of his Complaint. Hershey further admits that Plaintiff refused to
13 provide Ms. Galloway any more specific details. Hershey admits Ms. Galloway determined
14 there was an error in the consequences section of Plaintiff's Development Plan, which she
15 corrected and reissued to Plaintiff. Except as expressly admitted, Hershey denies the
16 remaining allegations contained in paragraph 53.

17 54. Hershey admits that Ms. Galloway informed Plaintiff of the results of her
18 investigation after he refused to cooperate or provide the requested information. Hershey
19 further admits that at the time of Plaintiff's voluntary resignation, he had an outstanding
20 balance of \$20,260.82 on his corporate credit card for personal purchases, late fees and
21 interest. Hershey states that Plaintiff admitted that he used his corporate card improperly for
22 personal, non-work related purchases, in violation of Hershey's corporate credit card usage
23 policy, which prohibits personal use of credit cards. Hershey fully reimburses its corporate
24 credit card holders who submit requests for reimbursement for authorized business travel
25 expenses and, therefore, Plaintiff agreed to and was also obligated to pay off the balance of
26 the corporate credit card in full each month. Except as expressly admitted, Hershey denies

1 the remaining allegations contained in paragraph 54.

2 55. Hershey denies paragraph 55.

3 56. Hershey admits Plaintiff went on leave pursuant to the Family Medical Leave
4 Act starting on August 30, 2010. Except as expressly admitted, Hershey denies the
5 allegation in paragraph 56.

6 57. Hershey denies that Plaintiff was constructively discharged on December 20,
7 2010 and states that it is without sufficient information to admit or deny the remaining
8 allegations in paragraph 57 and, therefore, denies the same.

9 58. Hershey denies paragraph 58.

10 **FIRST CLAIM FOR RELIEF: RACIAL DISCRIMINATION**

11 **Title VII – 42 U.S.C. § 2000e-2 (Against Hershey)**

12 59. Hershey incorporates by references its responses to paragraphs 1 through 58
13 of Plaintiff's Complaint as set forth above.

14 60. Hershey denies paragraph 60.

15 61. Hershey admits that Plaintiff is an African-American male and is a member of
16 a protected class. Hershey denies it or any of its supervisory personnel discriminated against
17 Plaintiff on the basis of his race or any other protected class status. To the extent not
18 expressly admitted, Hershey denies paragraph 61.

19 62. Hershey denies paragraph 62.

20 63. Hershey denies paragraph 63.

21 64. Hershey denies paragraph 64.

22 65. Hershey denies paragraph 65.

23 66. Hershey denies paragraph 66.

24 ///

25 ///

1 **SECOND CLAIM FOR RELIEF: RACIAL DISCRIMINATION –**
2 **CONSTRUCTIVE DISCHARGE**

3 **Title VII – 42 U.S.C. § 2000e-2 (Against Hershey)**

4 67. Hershey incorporates by references its responses to paragraphs 1 through 66
5 of Plaintiff's Complaint as set forth above.

6 68. Hershey denies paragraph 68.

7 69. Hershey denies paragraph 69.

8 70. Hershey denies paragraph 70.

9 71. Hershey denies paragraph 71.

10 **THIRD CLAIM FOR RELIEF: RACIAL DISCRIMINATION –**
11 **HOSTILE WORK ENVIRONMENT**

12 **Title VII (Against Individual Defendants)**

13 72. Hershey incorporates by reference its response to paragraphs 1-71 above of
14 Plaintiff's Complaint as set forth above.

15 73. Plaintiff's Third Claim for Relief does not asset a claim against Hershey and,
16 therefore, no answer is required. To the extent an answer is required, Hershey denies
17 paragraph 73.

18 74. Plaintiff's Third Claim for Relief does not asset a claim against Hershey and,
19 therefore, no answer is required. To the extent an answer is required, Hershey denies
20 paragraph 74.

21 75. Plaintiff's Third Claim for Relief does not asset a claim against Hershey and,
22 therefore, no answer is required. To the extent an answer is required, Hershey denies
23 paragraph 75.

24 76. Plaintiff's Third Claim for Relief does not asset a claim against Hershey and,
25 therefore, no answer is required. To the extent an answer is required, Hershey denies
26 paragraph 76.

1 77. Plaintiff's Third Claim for Relief does not assert a claim against Hershey and,
2 therefore, no answer is required. To the extent an answer is required, Hershey denies
3 paragraph 77.

4 **FOURTH CLAIM FOR RELIEF: EMPLOYMENT DISCRIMINATION –**
5 **RETALIATION**

6 **Title VII – 42 U.S.C. § 2000e-2 (Against All Defendants)**

7 78. Hershey incorporates by references its responses to paragraphs 1 through 77
8 of Plaintiff's Complaint as set forth above.

9 79. Hershey denies paragraph 79.

10 80. Hershey admits that Plaintiff is an African-American male and is a member of
11 a protected class. Hershey denies it or any of its supervisory personnel discriminated against
12 or retaliated against Plaintiff. To the extent not expressly admitted, Hershey denies
13 paragraph 80.

14 81. Hershey denies paragraph 81.

15 82. Hershey denies paragraph 82.

16 83. Hershey denies paragraph 83.

17 84. Hershey denies paragraph 84.

18 **FIFTH CLAIM FOR RELIEF: EMPLOYMENT DISCRIMINATION –**
19 **DISPARATE TREATMENT**

20 **RCW 49.60.180(3) (Against All Defendants)**

21 85. Hershey incorporates by references its responses to paragraphs 1 through 84
22 of Plaintiff's Complaint as set forth above.

23 86. Hershey denies paragraph 86.

24 87. Hershey admits that Plaintiff is an African-American male and is a member of
25 a protected class. Hershey denies it or any of its supervisory personnel discriminated against
26 Plaintiff. To the extent not expressly admitted, Hershey denies paragraph 87.

1 88. Hershey denies paragraph 88.

2 89. Hershey denies paragraph 89.

3 90. Hershey denies paragraph 90.

4 91. Hershey denies paragraph 91.

5 **SIXTH CLAIM FOR RELIEF: EMPLOYMENT DISCRIMINATION –**
6 **HOSTILE WORK ENVIRONMENT**

7 **RCW 49.60.180(3) (Against All Defendants)**

8 92. Hershey incorporates by references its responses to paragraphs 1 through 91
9 of Plaintiff's Complaint as set forth above.

10 93. Hershey denies paragraph 93.

11 94. Hershey denies paragraph 94.

12 95. Hershey denies paragraph 95.

13 96. Hershey denies paragraph 96.

14 97. Hershey denies paragraph 97.

15 **SEVENTH CLAIM FOR RELIEF: INTENTIONAL INFLICTION OF**
16 **EMOTIONAL DISTRESS (Against Individual Defendants)**

17 98. Hershey incorporates by reference its response to paragraphs 1-97 of
18 Plaintiff's Complaint as set forth above.

19 99. Plaintiff's Seventh Claim for Relief does not asset a claim against Hershey
20 and, therefore, no answer is required. To the extent an answer is required, Hershey denies
21 paragraph 99.

22 100. Plaintiff's Seventh Claim for Relief does not asset a claim against Hershey
23 and, therefore, no answer is required. To the extent an answer is required, Hershey denies
24 paragraph 100.

25 101. Plaintiff's Seventh Claim for Relief does not asset a claim against Hershey
26 and, therefore, no answer is required. To the extent an answer is required, Hershey denies

1 paragraph 101.

2 102. Plaintiff's Seventh Claim for Relief does not asset a claim against Hershey
3 and, therefore, no answer is required. To the extent an answer is required, Hershey denies
4 paragraph 102.

5 103. Plaintiff's Seventh Claim for Relief does not asset a claim against Hershey
6 and, therefore, no answer is required. To the extent an answer is required, Hershey denies
7 paragraph 103.

8 104. Plaintiff's Seventh Claim for Relief does not asset a claim against Hershey
9 and, therefore, no answer is required. To the extent an answer is required, Hershey denies
10 paragraph 104.

11 **RELIEF SOUGHT**

12 105. Hershey states that the remainder of the allegations in Plaintiff's Complaint,
13 including the "Prayer for Relief," constitute legal conclusions to which no answer is
14 required. To the extent an answer is required, Hershey denies that Plaintiff is entitled to any
15 type of remedy, relief or damages including the relief requested in his Prayer for Relief.
16 Hershey denies each and every allegation of the Complaint not specifically admitted herein.

17 **AFFIRMATIVE DEFENSES**

18 Having fully answered Plaintiff's Complaint, and without waiving Plaintiff's burden
19 of proof, Hershey asserts the following affirmative defenses and prays for judgment as set
20 forth below.

21 1. Plaintiff has failed to exhaust his administrative and/or internal remedies and,
22 therefore, Plaintiff's claims are barred as a matter of law.

23 2. Plaintiff has failed to state facts sufficient to constitute a cause of action upon
24 which relief can be granted.

25 3. Some or all of Plaintiff's claims are barred by the applicable statute of
26 limitations.

- 1 4. Some or all of Plaintiff's claims are barred by the doctrine of laches.
- 2 5. Plaintiff's claims are barred, in whole or in part, by the doctrine of waiver and
3 estoppel.
- 4 6. Some or all of Hershey's conduct was justified and/or privileged, thus barring
5 any recovery against Hershey.
- 6 7. To the extent Hershey acquires any evidence of wrongdoing by Plaintiff
7 during the course of this litigation, which wrongdoing would have materially affected the
8 terms and conditions of Plaintiff's employment and/or would have resulted in Plaintiff either
9 being demoted, disciplined, or terminated, such after-acquired evidence shall bar Plaintiff on
10 liability or damages, or shall reduce such claims as provided by law.
- 11 8. Hershey exercised reasonable care to prevent and correct promptly any
12 unlawful conduct, Plaintiff unreasonably failed to take advantage of the preventative and
13 corrective opportunities provided by Hershey or otherwise to avoid harm, and the reasonable
14 use of Hershey's internal procedures and remedies would have prevented some, if not all, of
15 Plaintiff's claimed damages from occurring.
- 16 9. At all times relevant to the Complaint, Hershey had in place reasonable
17 policies and procedures to address complaints of discrimination and/or retaliation. Plaintiff
18 unreasonably failed to avail himself of any of the Company's procedures and, therefore, is
19 barred from any recovery in this action.
- 20 10. Plaintiff's Complaint fails to state a cause of action against Hershey to the
21 extent the alleged misconduct of its employees did not occur during or within the scope of
22 their employment with Hershey.
- 23 11. At all times and places, Hershey performed and discharged in good faith each
24 and every obligation it owed, if any, to Plaintiff.
- 25 12. Plaintiff has failed to mitigate his damages.
- 26 13. Hershey performed and discharged each and every obligation owed to

1 Plaintiff, if any, except such obligations as Hershey was excused from performing as a result
2 of Plaintiff's conduct and/or failure properly to perform his obligations.

3 14. Hershey reserves the right to assert such additional affirmative defenses that
4 may appear and prove applicable during the course of this litigation.

5 COUNTERCLAIMS

6 COMES NOW Defendant and Counterclaimant The Hershey Company ("Hershey")
7 and alleges the following:

8 JURISDICTION

9 1. This Court has supplemental jurisdiction over Hershey's Counterclaims for
10 Breach of Contract, Promissory Estoppel and Unjust Enrichment pursuant to 28 U.S.C.
11 1367(a).

12 FACTS

13 2. On or about April 7, 2009, Hershey issued Plaintiff-Counterdefendant Al
14 Dennis ("Plaintiff") a corporate credit card, issued by CitiBank, pursuant to Hershey's
15 corporate credit card usage policy and Plaintiff's written acknowledgement that all purchases
16 must be business related, the corporate card was not to be used for personal use.

17 3. Upon submission of authorized business related expenses, Hershey fully
18 reimbursed employees for those expenses.

19 4. Pursuant to the terms of the Participating Employee Acknowledgment of
20 Responsibilities, Plaintiff agreed that he would pay the balance of the corporate credit card
21 bill each month.

22 5. At the time of Plaintiff's voluntary resignation from Hershey, he had an
23 outstanding balance of \$20,260.82 on his corporate credit card for personal purchases, late
24 fees and interest.

25 6. Plaintiff admitted that he used his corporate card improperly for personal,
26 non-work related purchases.

1 7. Hershey paid Plaintiff's outstanding balance of \$20,260.82 on behalf of
2 Plaintiff.

3 8. Plaintiff promised to repay his outstanding balance, which he never did.

4 9. Hershey has been damaged and Plaintiff has been unjustly enriched in the
5 amount of \$20,260.82 as a result of his actions.

6 **FIRST COUNTERCLAIM: BREACH OF CONTRACT**

7 10. Hershey incorporates by reference the allegations set forth in its Counterclaim
8 at paragraphs 1 through 9.

9 11. Plaintiff agreed to abide by the terms of Hershey's corporate credit card usage
10 policy, which prohibits personal use of credit cards, and to the terms of his agreement that he
11 would not be permitted to use the card for personal use and was required to pay off the
12 balance in full each month.

13 12. Plaintiff breached that promise by incurring \$20,260.82 in personal charges,
14 late fees, and interest on his corporate credit card.

15 13. As a result of Plaintiff's breach, Hershey paid Plaintiff's debt to the bank.

16 14. Hershey has demanded Plaintiff's repayment of this debt.

17 15. Plaintiff has improperly and in violation of his promises to Hershey refused to
18 repay the \$20,260.82 paid on his behalf.

19 16. As a result of Plaintiff's breach, Hershey has been damaged in the amount of
20 \$20,260.82 plus interest and attorneys' fees.

21 **SECOND COUNTERCLAIM: PROMISSORY ESTOPPEL**

22 17. Hershey incorporates by reference the allegations set forth in its Counterclaim
23 at paragraphs 1 through 16.

24 18. Plaintiff made clear, unambiguous promises to Hershey that he would (1)
25 abide by the terms of Hershey's corporate credit card usage policy, which prohibits personal
26 use of credit cards, (2) abide by the terms of his agreement that he would not permitted to use

1 the card for personal use and was required to pay off the balance in full each month, and (3)
2 when the balance of his personal charges equaled \$20,260.82 (including late fees and
3 interest), he would repay the balance in monthly installments of \$400 until paid in full.

4 19. Plaintiff made these promises with the reasonable expectation that Hershey
5 would provide him with a corporate credit card and, later, pay off his balance of \$20,260.82
6 with the understanding he would repay Hershey.

7 20. As a result of Plaintiff's promises, Hershey provided Plaintiff with a corporate
8 credit card and, later, paid off his balance of \$20,260.82 to the bank.

9 21. Hershey justifiably relied upon Plaintiff's promises.

10 22. Plaintiff has improperly and in violation of his promises to Hershey refused to
11 repay the \$20,260.82 paid on his behalf.

12 23. Hershey has been damaged in the amount of \$20,260.82 plus interest and
13 attorneys' fees.

14 **THIRD COUNTERCLAIM: UNJUST ENRICHMENT**

15 24. Hershey incorporates by reference the allegations set forth in its Counterclaim
16 at paragraphs 1 through 23.

17 25. Plaintiff received the benefit of Hershey paying his balance of personal
18 charges, late fees, and interest on his corporate credit card.

19 26. Hershey advised Plaintiff that it paid the balance of his credit card.

20 27. Plaintiff has been unjustly enriched by inequitably retaining the benefit
21 Hershey conferred by paying Plaintiff's charges for his personal use, late fees, and interest on
22 his corporate credit card.

23 28. Hershey has been damaged in the amount of \$20,260.82 plus interest and
24 attorneys' fees.

25 ///

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Hershey prays for the following relief:

3 1. That Plaintiff take nothing by the claims and allegations set forth in his
4 Complaint;

5 2. That Hershey be awarded \$20,260.82 plus interest and attorneys' fees on its
6 Counterclaims;

7 3. That Hershey be awarded the cost of suit;

8 4. That Hershey be awarded reasonable attorneys' fees incurred by this action;
9 and

10 5. That such other and further relief be granted in favor of Hershey as the Court
11 deems appropriate.

12 Dated this 19th day of April, 2013.

13 SCHWABE, WILLIAMSON & WYATT, P.C.

14
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24 *Attorneys for Defendants*
25
26

I hereby certify that on the 19th day of April, 2013, I served the foregoing
 DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT AND COUNTERCLAIMS on
 the following persons:

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